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November 2, 2006

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By Hand Delivery

Honorable Dale A. Kimball
United States District Court Judge
U.S. District Court, Central District of Utah
Courtroom 220, Chambers Room 222
350 South Main Street
Salt Lake City, Utah

Re: *The SCO Group, Inc. v. Novell, Inc.*
Case No. 2:04CV00139 DAK

Dear Judge Kimball:

We write on Novell's behalf to address the issue of trial timing discussed by counsel for IBM and SCO in their October 27 and October 31 letters to you. Because these discussions concern how and when issues may be resolved in *SCO v. Novell*, Novell respectfully submits this short statement for your consideration.

First, at SCO's urging, this Court just pushed back the schedule in *SCO v. Novell*. A few weeks ago, SCO moved to extend discovery for six months and to delay its responses to outstanding discovery. SCO even requested a stay of the entire *Novell* litigation until completion of the *IBM* trial. The Court's October 24, 2006 order extended fact discovery three months (to February 1, 2007), granted SCO ninety days to respond to Novell's outstanding discovery requests (to December 24, 2006), and set a new trial date of September 17, 2007. SCO's new request to advance the *Novell* trial is diametrically opposed to the relief SCO just sought and was in part granted.

Second, Novell believes that the better question for the Court is the proper sequencing of *issues* for trial, not which case's trial should precede the other. The answer to the former question will flow from the Court's rulings on the dispositive motions in both cases. Until then, neither the parties nor the Court will know which issues remain to be tried. Novell therefore proposes that the Court address the sequencing of issues for trial after resolution of dispositive motions.

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Finally, the Court's recent scheduling of the *Novell* case for trial on September 17, 2007 is sufficiently deferred to allow the Court time to decide summary judgment motions in both cases. Issues that might remain in the *Novell* or *IBM* cases after summary judgment could be tried in that time frame. (The *Novell* trial was originally set for 21 days.) After the Court's summary judgment rulings, the parties and the Court can address which issues are best tried (and in what order) beginning on that date. In the interim, the Court could direct SCO, Novell and IBM to plan for trial beginning on September 17, 2007.

Respectfully submitted,



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